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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,087	04/20/2004	Naila K. Khalaf	USP2401A-NKK	6011
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RAYMOND Y. CHAN				
108 N. YNEZ AVE., SUITE 128				
MONTEREY PARK, CA 91754				
EXAMINER				
DEMILLE, DANTON D				
ART UNIT		PAPER NUMBER		
3771				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/829,087

Applicant(s)

KHALAF, NAILA K.

Examiner

Danton DeMille

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21, 23, 25, 27, 29, 31, 33 and 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21, 23, 25, 27, 29, 31, 33 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The amendment filed 26 July 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

Claim 21 now recites “that a user is able to selectively switch on and switch off said messaging(sic) device from an exterior of said receiving pocket without physically accessing said massaging device in said receiving pocket through said access opening”. The specification does not appear to support such a claim. The specification recites “Specifically, the control switch 24 is disposed in the receiving pocket 112 which defines an access opening 1121 communicating the receiving pocket 112 with an exterior of the massager body 10 wherein the user of the present invention may be able to operate the control switch 24 through the access opening 1121.” Clearly this recites that the user can only operate the control switch through the access opening. This contradicts the claim language.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

Claims 21, 23, 25, 27, 29, 31, 33, 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is not clear how the user can use the switch without accessing the device through the access opening.

Claims 21, 23, 25, 27, 29, 31, 33, 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 21, it is not clear how the user can access the switch without going through the access opening. Moreover, it is not clear how much weight can be given the limitations of the user being able to selectively switch on and switch off the massaging device when the switch has not been claimed as part of the claimed combination. Without a switch being claimed non of this language can be considered.

There is no clear antecedent basis for “said single treatment surface” in claim 21. Since the specification does not support the device having a single treatment surface no patentable weight can be given this language. The vibrations generated by the device are not limited to just one surface.

Regarding claim 21, it is recited that first and second elongated fastening straps are frontwardly extended from the massager body. This would appear to be inaccurate. Straps 311 and 312 extend rearwardly in relation to the forward and rearward direction of the car.

Claim 31 is further defining the massager device to further include a control switch

Claim Rejections - 35 USC § 103

Claims 21, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunn.

Lunn teaches the heart of applicant’s invention. Lunn teaches a seat belt massager for detachably fastening on a seat belt comprising a massager body 10 having a massage portion defining an inner treatment surface 16 and a massaging device 12. The massage device 12 is adapted to effectively deliver massage impulse to an exterior of the massager body through the

treatment surface 16 to the body of the user. Lunn teaches a receiving pocket 14 formed on the massage portion and defining an access portion or opening at one end which communicates the receiving pocket with an exterior of said massage body. It would appear that "said massaging device is completely disposed and substantially protected in said receiving pocket via said access opening in such a manner that a user is able to selectively switch on and switch off said massaging(sic) device from an exterior of said receiving pocket without physically accessing said massaging device in said receiving pocket through said access opening". Because the pocket is the only thing that supports the massaging device on the massager body it would appear that the pocket 14 completely disposes and substantially protects the massaging device therewithin. The pocket disposes the massage device and substantially protects it. Since the original disclosure only supports accessing the switch through the access opening, Lunn also teaches the open end access opening for accessing the switch. If it is felt that the massaging device of Lunn is not completely disposed and substantially protected by the pocket 14 on the massager body it would have been obvious to modify the pocket to more completely dispose the massage device on the massager body to more completely support the massager device on the massager body. Such would appear to be well within the realm of the artisan of ordinary skill. There appears to be no unobviousness to the exact details of how the massage device is disposed on the massager body.

A seat belt fastening arrangement includes first 26 and second 28 elongated fastening straps frontwardly extended from the massager body wherein the two end portions 26, 28 of the fastening straps overlappedly communicating with each other to define a connecting loop within the two fastening straps such that the seat belt is adapted to slidably pass through the connecting

loop. While Lunn teaches snaps 30 as fastening means provided on the massager body for detachably fastening the massager body on the seat belt they may not be adjustably connected together. There appears to be no unobviousness to using any other conventional means for attaching the two ends of the straps together in order to form the connecting loop. Hook and loop fastening means is one conventional means for fastening the two ends of the straps together. The examiner takes official notice that hook and loop fastening means are well known to the artisan of ordinary skill as a means to fasten two straps together quickly, economically and also provide adjustability. It would have been obvious to one of ordinary skill in the art to modify Lunn to use hook and loop fastening means instead of the snap fasteners 30 providing the predictable results of quick and economical means of fastening the two straps together that also provide adjustability and is an obvious equivalent alternative means for providing the same function.

Claims 23, 27, 29, 31, 33, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunn in view of Sears.

Lunn may not disclose the details of the inner workings of the vibrator because such is well within the realm of the artisan of ordinary skill. Any conventional arrangement would have been an obvious provision. Sears teaches the convention of using a battery operated motor with an eccentric weight in a pocket attached to a belt. It would have been obvious to one of ordinary skill in the art to modify Lunn to use a conventional battery, motor and eccentric weight as taught by Sears to provide the details of a conventional vibration device.

Claims 23, 27, 29, 31, 33, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunn in view of Hajianpour.

Lunn may not disclose the details of the inner workings of the vibrator because such is well within the realm of the artisan of ordinary skill. Any conventional arrangement would have been an obvious provision. Hajianpour teaches the convention of using a battery operated motor with an eccentric weight in a pocket attached to a belt. It would have been obvious to one of ordinary skill in the art to modify Lunn to use a conventional battery, motor and eccentric weight as taught by Sears to provide the details of the vibration device.

Response to Arguments

Applicant's arguments filed 26 July 2007 have been fully considered but they are not persuasive.

Applicant argues that Lunn does not teach a receiving socket that completely disposes and substantially protects the massaging device. The structure 14 of Lunn would appear to be a pocket because it circumferentially surrounds the massaging device over most of its length. Applicant is merely arguing a matter of degree. If the structure 14 of Lunn were to cover both ends of the massaging device it would then meet applicant's arguments. This is a matter of degree as to how much of the pocket 14 covers the massaging device 12. There appears to be no patentability to change the degree in which the pockets 14 of Lunn cover the massaging device. Moreover, Lunn describes the structure 14 as a compartment. A "compartment" would appear to comprehend a pocket. A pocket is defined as a receptacle, cavity or opening. The compartment of Lunn would at least be a cavity or opening for the massaging device.

Applicant argues that the massaging device 12 of Lunn is "held" rather than being "disposed". There is no patentable difference between the two terms. Disposed does not further restrict the way the massaging device is positioned on the massager body. One of the definitions

of "disposed" is to put in a particular or suitable place. It is the examiner's position that the massaging device 12 of Lunn is "disposed" or put in a particular or suitable place on the massager body.

Applicant also argues that Lunn's discloses the vibrator 12 transmits the vibration through a plurality of physical layers. While the path that applicant describes is one path for the vibration to go through to the user there is also a direct path in which vibration from the vibrator in the pocket goes directly to the strap 16 which wraps around to the back or rear side of the massager body directly to the user. Therefore there is only one physical layer between the vibrator and the user. Moreover, applicant's invention has to go through a plurality of physical layers as well. The vibration has to go through the treatment surface and the seat belt before getting to the user.

Moreover, it is not clear how the claims define this difference over Lunn. Even if Lunn is somehow different from the instant invention the claims do not define this distinction over Lunn. The only difference between claim 21 and Lunn is the use of an adjustable seat belt fastening means. Using conventional hook and loop fastening means instead of snaps is not a patentable difference and does not distinguish a seat belt massager from the vibrator attached to a seat belt. The only other difference is whether or not the pocket 14 of Lunn completely disposes the massaging device 12 on the massager body. This is only a matter of degree. The difference claimed would have to produce a new and unexpected result which is different in kind and not merely in degree from the results of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

31 March 2008

/Danton DeMille/
Danton DeMille
Primary Examiner
Art Unit 3771